

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13106, of Gary Investment Inc., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the lot area requirements (Sub-section 3301.1) for the proposed construction of a single family detached dwelling in an R-2 District at premises 5501 Hayes Street, N.E., (Square 5213, Lot 18).

HEARING DATE: January 23, 1980
DECISION DATE: April 2, 1980

FINDINGS OF FACT:

1. The subject site is located at the southeast corner of the intersection of 55th and Hayes Streets, N.E. and is known as 5501 Hayes Street. It is in an R-2 District.
2. The subject site is 3537.90 square feet in area and is unimproved. There is a fifteen foot public alley to the east of the property.
3. The subject site is triangular in shape.
4. The applicant proposes to construct a three bedroom single family detached dwelling on the site. The Zoning Regulations for a detached dwelling in an R-2 District requires a minimum lot area of 4,000 square feet. The applicant seeks a lot area variance of 462.10 square feet or approximately twelve per cent. The proposed development meets all the other requirements of the Zoning Regulations.
5. The applicant testified that the lot was a buildable lot when purchased in the mid-1960's.
6. The Board requested the Office of Planning and Development to prepare a report on application Nos. 13105, 13106 and 13107. The report was served on all parties and their comments were requested. All three applications were filed by the same applicant. In each application the applicant proposes to develop the site with single family detached dwellings. All three sites are located in the same neighborhood and in close proximity to each other. The OPD provided one consolidated report.

7. In its report, dated February 26, 1980, the OPD reported that a building permit was issued in September 1967, to allow the construction of a single family dwelling. The building permit expired without construction of the house. The OPD reported that although the building permit was issued in 1968 for a detached dwelling, the lot area was calculated on the basis of 3000 square feet specified for a semi-detached dwelling instead of the required 4000 square feet for detached dwelling under Section 3301.1. The OPD further noted that the Zoning Regulations were amended in the early 1970's to include a new Sub-section 3305.4 which reads as follows:

3305.4 In R-2, R-3, R-4 and R-5 Districts when a one family dwelling, flat or multiple dwelling is erected which does not share a common division wall with an existing building or a building being constructed together with the new building then it shall have a side yard on each resulting free standing side.

The structure proposed in this case is thus required to have a side yard on each side, and is thus by definition a detached dwelling. Such a structure is required to have a minimum lot area of 4,000 square feet and not 3000 square feet as specified for a semi-detached dwelling in the R-2 District.

As to the subject application, No. 13106, the OPD recommended that the application be approved on the grounds that the requested variance arises from the irregular shape and size of the lot and that the relief requested is not likely to impact adversely the surrounding area. The Board does not concur for reasons later stated in the Conclusions of Law.

8. Advisory Neighborhood Commission - 7C objected to the application on the grounds that there is not sufficient square footage to build the single family dwelling without constructing unsightly and undesired buildings. The Board concurs as to the smallness of the site.

9. The Burville Civic Association and owners of property in the immediate area objected to the application. There was also a petition of neighboring residents in opposition to the application. The grounds of the opposition were that any variance in excess of ten percent was too great and would have a negative impact on the neighborhood; that inferior-type housing would result and that the adjoining property owners would have their right of privacy violated. The Board so finds as to the extent of the variance and the violation of privacy.

10. The applicant, in rebutting the objections raised, testified that he has been building in the subject neighborhood for over twenty-six years, that he is not a speculator and that warranties are issued on the dwellings he constructs. The Board does not question the integrity of the applicant. It is the Board's opinion that the builder would be constricted in his plans because of the size of the land area.

CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing of a practical difficulty upon the owner of the property that stems from the property itself. The Board concludes that the size of the site and its triangular shape constitutes a practical difficulty. However, the Board concludes that a twelve percent variance is too great a variance. The Board notes the objections of the ANC and the neighboring property owners in which the Board concerns. The Board further concludes that the application cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-1 (Charles R. Norris, Connie Fortune and Leonard L. McCants to DENY; William F. McIntosh OPPOSED).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 18 JUN 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."